

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

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MARC SOBEL)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Applicant for Certain Part 90 Authorizations)
in the Los Angeles Area and Requestor of)
of Certain Finder's Preferences)

WT DOCKET No. 97-56

MARC SOBEL AND MARC SOBEL)
d/b/a AIR WAVE COMMUNICATIONS)

Licensee of Certain Part 90 Stations in the)
Los Angeles Area)

To: The Commission

SECOND SUPPLEMENT TO PETITION FOR RECONSIDERATION

Marc D. Sobel ("Sobel") hereby offers this further supplement to his June 7, 2002,
Petition for Reconsideration in the above-captioned proceeding.

I. INTRODUCTION

1. On September 17, 2002, Sobel filed his *Supplement to Petition for Reconsideration* ("*RFI Supplement*") in this matter. Sobel there noted that one of the major points made in Sobel's *Revised Request for Inquiry and Investigation* ("*RFI*") is that Commission staff have engaged in a pattern of discrimination and selective prosecution against Sobel and Kay. *RFI Recon. Supp.* at ¶¶ 1-2. Sobel demonstrated, moreover, that these discriminatory practices are continuing and ongoing. *Id.* at ¶¶ 3-9. **As** evidence of the continuing pattern of animus, discrimination, and selective prosecution, Sobel cited three specific examples, summarized and updated below.

2. S & L Teen Hospital Shuttle. As demonstrated in the supplement, *RFI Recon. Supp.* at ¶¶ 3-4 & Attachment No. 1, the Commission staff has totally ignored the failure of Mr. Steve Sawhill to respond to a Section 308(b) request seeking information, inter alia, concerning a

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possible unauthorized transfer of control. It is significant that the Commission issued the 308(b) information request only as an alternative to taking action against Mr. Sawhill. The Commission denied Kay's request to deny the reinstatement and renewal application filed in connection with Conventional Business Radio Service Station WJ767, stating that it would instead deal with the matter in separate enforcement proceedings. But Mr. Sawhill has blatantly ignored the 308(b) request, and the Commission has done nothing in response.

3. It has now been more than one year and three months since the 308(b) request was sent to Mr. Sawhill. He has not responded, and the Commission staff seems entirely unconcerned. This is impossible to square with the Commission's treatment of Kay, namely, (a) freezing processing of all his applications while the 308(b) request is outstanding (rather than using it as an alternative to application proceeding adjudication, as it did with Mr. Sawhill) and (b) designating revocation proceedings against Mr. Kay on the theory that his responses to the 308(b) request were inadequate (while allowing Mr. Sawhill to totally ignore such a request).

4. National Science and Technology Network, Inc. In his supplement, *RFI Recon. Supp.* at ¶¶ 5-6 & Attachment Nos. 2 & 3, Sobel showed that Commission staff has continually ignored both Kay's September 24, 2001, letter complaint and his July 30, 2002, follow-up inquiry, describing in specific detail violations and improper conduct by National Science and Technology Network, Inc. There still has been no action on this matter, a stark contrast with the major offensive that was launched against Kay and Sobel based on extremely general, non-specific "complaints" from obviously biased sources.

5. Mobile Relay Associates. Finally, the supplement also documents, *RFI Recon. Supp.* at ¶¶ 7-8 & Attachment Nos. 4 & 7, that Mobile Relay Associates and Mobile Radio Associates, Inc. (collectively "MRA") and their principal, Mr. Mark J. Abrams, tendered several assignment of license applications even though they were fully aware that the subject licenses were no longer valid, having been permanently removed from service and operation years prior

to submission of the assignment applications. Mr. Abrams falsely certified that the station was timely constructed and in operation. Such conduct constitutes blatant misrepresentation and lack of candor. The allegations are fully documented and conclusively demonstrated in a series of pleadings filed by Kay starting as early as December 4, 2001. The Commission still has not taken any action on this matter. In the above-captioned proceeding, Commission staff bent over backwards in an effort to impose a subjective interpretation on words uttered by Sobel to support its assertions of misrepresentation and lack of candor. This does not jibe with the Commission's indifference to unequivocal acts of lying and withholding relevant information in the case of Abrams and **MRA**

II. ADDITIONAL CURRENT DISCRIMINATION

6. Thus, as demonstrated in the supplement, the discriminatory selective prosecution and other unfair treatment against Sobel and Kay is not a one-time past event—it is pervasive and continuous. As he stated in his supplement:

Sobel assumes that such a failure by the staff—whether it be neglect or intentional discrimination—is neither authorized nor condoned by the Commission, and so the Commission presumably would want to carefully investigate and address these matters. But the fact that this conduct continues to this day, and apparently will continue until such time as the Commission discharges its duty to police the actions of its staff, an even greater urgency exists.

RFL Recon. Supp. at ¶ 10. Yet, the problem has not even abated in those specific cases brought directly to the Commission's attention in the supplement almost six months ago. Nevertheless, Sobel would not be filing this further supplement for the sole purpose of making just that point. The crucial purpose of this further supplement is to bring directly to the Commission's attention continuing and additional examples of such discriminatory treatment.

7. ~~Grant of MRA Renewal Applications.~~ As discussed in paragraph 5, above, the Commission has been presented with well-documented proof that **MRA** has engaged in misrepresentation, lack of candor, and abuse of process in its dealings with the Commission.

That responsible staff have not taken action against MRA for this is had enough, but it further appears that staff also intends to process and grant MRA applications while ignoring these substantial and firmly supported allegations. For example, at least a dozen MRA renewal applications have been granted in the past six months.¹ This stands in stark contrast to the manner in which the same Commission staff treated Sobel and Kay. Based on vague and second hand *ex parte*² allegations with substantially less support — indeed, often with no support whatsoever — received from competitors and other adverse parties, Commission staff, with neither notice, explanation, nor justification froze action on all applications by Sobel and Kay. Staff even went so far as to unilaterally rescind authorizations, without hearing, long after the grants had become effective and final.⁴ The granting of these applications without proper resolution of the serious outstanding questions regarding MRA's basic qualifications is, in and of

¹ See FCC File Nos. 0001181067 (YG Station WPLV683), 0001181054 (GO Station WPCA896), 0001076407 (IG Station WIJ226), 0001076405 (YG Station KNDZ379), 0001076365 (YG Station WPLS581), 0001076364 (YG Station WPLS571), 0001076163 (YG Station WPLS570), 0001076362 (YG Station WPLS567), 0001076361 (YG Station WPLS563), 0001028303 (YG Station WPLQ457), 0001028296 (IG Station WIB815), and 0001018807 (IG Station KH7048).

² Although not required to do so, acting in the interest of fundamental fairness, Kay served copies of the following pleadings on MRA: (a) *Petition for Enforcement Action* ("Petition"), filed December 4, 2001; (b) *Supplement to Petition for Enforcement Action* ("Supplement"), filed on March 5, 2002; (c) *Second Supplement to Petition for Enforcement Action* ("Second Supplement"), filed on April 23, 2002; and (d) *Third Supplement to Petition for Enforcement Action* ("Third Supplement"), filed on October 3, 2002. MRA ignored the complaints, and only responded when Kay raised the matter in the context of specific pending MRA application proceedings (*see Petition to Deny*, filed on October 10, 2002, in FCC File No. 0000530288 et al., and *Petition for Reconsideration* filed on October 10, 2002, in FCC File No. 0001028303 et al.), but even then MRA's response was not adequate to resolve the disputed substantial questions of material fact. See n. 3, below.

³ It will be noted that most of the "complaints" that ostensibly prompted the investigation of Kay and Sobel were unsupported, of conclusory and general nature, and were proffered by persons of questionable or no credibility who were overtly hostile to Kay and Sobel. Indeed, not a single one of the individuals whom Commission staff identified as the source of its pre-designation information against Kay were called as witnesses in the hearing. By contrast, Kay has presented detailed, documented, and fully supported information against MRA. That the staff can unabashedly heat these two situations in such a blatantly discriminatory manner is mind boggling.

⁴ Compare: (a) *S & L Teen Hospital Shuttle*, DA 00-314, released February 18, 2000, and Kay's February 25, 2000, *Application for Review* thereof (where the Bureau sought to enforce the thirty-day time limit against Kay based on an inaccurate set of facts falsely manufactured by the Bureau); (b) Kay's January 27, 2000 *Application for Review* in City of Commerce, File No. D122643 (where the Bureau enforced the thirty-day finality provision in favor of a party adverse to Kay), and (c) the September 16, 1994 (WNMY402), and November 15, 1994 (WNQK532), letters of W. Riley Hollingsworth in which the Bureau unabashedly rescinded grants to Kay long after the thirty-day finality period had lapsed. There simply is no way the Bureau's disparate rulings can be reconciled except on the basis of an improper anti-Sobel/Kay animus on the part of Bureau staff.

itself, an abdication by the Commission of its statutory obligations.⁵ Such *ultra vires* conduct is exacerbated by the Commission's preferential treatment of MRA as compared to the due process violations visited upon Sobel and Kay.

8. Processing of Sobel and Kay Applications. As mentioned in paragraph 7, above, the Commission staff unilaterally froze all applications on Kay and Sobel applications years before any designation order. In the Commission's final decisions in the hearing cases, however, it was determined that Kay and Sobel would retain their Subpart L (470-512 MHz) authorizations. One would therefore expect that the Commission would process and grant these applications, many of which have been pending for as many as eight or nine years. While there has been some limited licensing activity, the results are spotty at best. A review of the ULS database will show that Sobel has some twenty applications in pending status that have been on filed for eight years or more, and four of which are non-800 MHz applications, so that their processing and grant would be entirely consistent with even the strictest interpretation of the Commission's decision in the hearing cases. Kay has over 125 such applications that have been pending for three or more years (some as much as ten years or more), and the majority of these are non-800 MHz applications.⁶ When one searched for all applications in the ULS for the same or similar non-800 MHz services as the Kay and Sobel applications (IG and IK), of the slightly more than 100 applications that have been pending for four or more years, only a dozen were filed by parties other than Sobel or Kay. This clearly smacks of discriminatory treatment that the Commission must remedy,

⁵ This resolution is problematic in itself. If the Commission found that Kay's protest had raised sufficient questions to require further enforcement action in the form of a Section 308(b) information request, then it could not possibly have made the specific findings it is obliged to make pursuant to Section 309 of the Communications Act. 47 U.S.C. §§ 309(a) & 309(d); *Citizens for Jazz on WRVR v. FCC*, 775 F.2d 392 (D.C. Cir. 1985).

⁶ In addition, the ULS continues to show that at least ten of Kay's authorizations (WIK315, WIK946, WIK697, WIK287, WIK329, WIK330, WIK332, WIK599, WIK761, and WIK762) expired without a renewal application having been filed, even though Kay has provided documentation of timely-filed renewal applications and asked that the database be corrected, in some cases repeatedly, but to no avail.

9. County of Orange Matter. Even routine and relatively simple uncontested matters are ignored by Commission staff if the ensuing delay is in any way adverse to Sobel or Kay. To cite hut one of many possible examples, Sobel points to the license for GP Station WPIX684, issued to the County of Orange, California. More than two years ago, on February 23, 2001, Kay submitted his *Complaint, Requestfor Cease and Desist Order, and Petitionfor Initiation of License Revocation Proceedings*, in which it was demonstrated that, notwithstanding the improper renewal of the license (see FCC File No. R501882), the subject 808/853.4875 MHz facilities had never been constructed and had not, in any event, been operational for well more than the twelve months that would trigger automatic license cancellation under the applicable rules. Kay submitted a supplement to this pleading on September 24, 2001, and has more recently tendered a letter inquiring on the status of this matter. **All** of these filings were served on the licensee who has not, to date, responded or in any way denied the factual allegations. Nevertheless, Commission staffcontinues to ignore the matter, presumably for no other reason than the allegations come from Kay.

111. **CONCLUSION**

10. The additional matters discussed in Section II (paragraphs 6-10), above, are not exhaustive. There are but a few of many possible examples that demonstrate that the matters which prompted the filing of the initial RFI are neither isolated nor exclusively past history. Clearly, the inquiry sought by Sobel is justified, and that would be the proper context in which to air an exhaustive presentation of all such matters

Respectfully submitted March 4, 2003,

Marc D. Sobel

By: 

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Certificate of Service

I, Robert J. Keller, counsel for Marc D. Sobel, hereby certify that on this **4th** day of March, 2003, I caused copies of the foregoing **FURTHER SUPPLEMENT TO PETITION FOR RECONSIDERATION** to be served, by U.S. mail, to the following:

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